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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO. 69 OF 2006
and
CMP.NO.533 OF 2006

Mrs.Baby Vanitha ...Petitioner

Vs.

P.K.Rajan ...Respondent

This Civil Revision petition is filed under Article 227 of the constitution of India against the order dated 24.10.2005 in I.A.No.1723 of 2004 in I.A.No.1198 of 2001 in O.S.No.711 of 2000 on the file of the Principal District Munsif, Namakkal.

For Petitioner: Mr.G.Justin

For Respondent: No appearance

O R D E R

This Civil Revision Petition has arisen from the order of the Principal District Munsif, Namakkal dated 24.10.2005 made in I.A.1723 of 2004 in I.A.No.1198 of 2001 in O.S.No.711 of 2000 on the file of the Principal District Munsif, Namakkal to set aside the exparte final decree passed against the petitioner dated 31.1.2003.

2. Heard the learned counsel for the petitioner. There is no representation for the respondent, when the matter was taken up for enquiry.

3. It was the suit for partition filed by the respondent and a preliminary decree came to be passed on contest. Then, an application was filed for passing a final decree in I.A.No.1198 of 2001. In those proceedings, all the defendants were set exparte and final decree came to be passed. While the matter stood thus, the instant application, I.A.No.1723/2004 was filed by the second defendant to set aside the exparte final decree and the matter was taken up for enquiry and the trial Court has set aside the final decree which is the subject matter of challenge.

4. The contention raised by the learned counsel for the petitioner is that at the time when the application was filed by the respondent/second defendant, he has not impleaded all the other defendants, the parties to the proceedings and if it is allowed to be

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proceeded, at this stage, all the defendants one after another may seek to set aside the same. Under the said circumstances, it has become necessary to set aside the order passed in I.A.No.1723 of 2004 .

5. After hearing the learned counsel for the petitioner, the Court is of the considered opinion that an order that has been passed is a ex-parte final decree against the second defendant only. Hence, in a case like this, where an application to set aside the final decree is passed, all the other defendants should have been impleaded, but it was not done so. It was also not brought to the notice of the lower court also.

6. Under such circumstances, the order passed by the lower court is set aside and the matter is remitted back to the lower court for passing final decree proceedings by giving opportunity to implead all other defendants. There is no impediment to implead all the other defendants and it is for the lower court to proceed in accordance with law as one required under the circumstances.

7. With the above observation, the Civil Revision petition is disposed of. No costs. Consequently, CMP.No.533 of 2006 is closed.

VJY

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

The Principal District Munsif,
Namakkal.

+1 cc to Mr.G.Justin, Advocate Sr.No.32668.

RS(CO)
dcp/18.6.07

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